

STATE OF NORTH CAROLINA

WAKE COUNTY

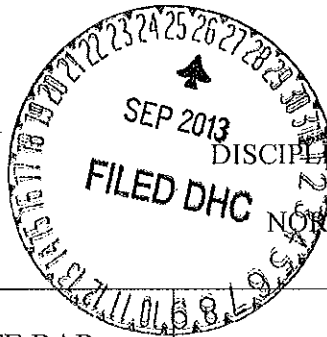
THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN H. MCWILLIAM, Attorney,

Defendant



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 23

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, John H. McWilliam (hereafter "Defendant" or "McWilliam"), was admitted to the North Carolina State Bar on 10 September 1993 and is an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, McWilliam actively engaged in the practice of law in the State of North Carolina and maintained a law office in Garner, Wake County, North Carolina.

4. Prior to 31 May 2011, Defendant was a member of the Calder and McWilliam law firm (hereafter "Calder Firm"). While employed at the Calder Firm, Defendant maintained BB&T trust account ending in number 2917 (hereafter "BB&T trust account").

5. On 31 May 2011, Defendant formed the law firm of McWilliam, Henderson and Wall (hereafter "MHW Firm") with two other lawyers.

6. After Defendant formed the MHW Firm, he opened a new trust account at North State Bank, account number ending in 9997 (hereafter "North State trust account").

7. The BB&T and the North State trust accounts were mainly used by Defendant as general trust accounts into which Defendant deposited and disbursed all entrusted client funds.

8. The MHW Firm employed the services of a bookkeeper (hereafter "Firm Bookkeeper"). This Firm Bookkeeper had previously worked for Defendant at the Calder Firm.

9. Defendant had managerial and direct supervisory authority over the Firm Bookkeeper during her employment at the Calder and MHW Firms.

10. During her employment at the Calder and MHW Firms, Defendant delegated to the Firm Bookkeeper receipt of entrusted client funds, deposit of entrusted client funds, and maintenance of account records for the BB&T and North State trust accounts. The Firm Bookkeeper did not have signature authority for the trust accounts.

11. Defendant did not review the Firm Bookkeeper's handling of entrusted funds.

12. Defendant failed to review bank statements or any other records for the BB&T and North State trust accounts.

13. Defendant failed to reconcile, at least quarterly, the North State trust account between May 2011 and January 2012.

14. Defendant also failed to reconcile, at least monthly, his check register with his trust account bank statements and failed to instruct anyone else to conduct these monthly reconciliations.

15. Before opening the North State trust account, Defendant failed to reconcile at least quarterly the BB&T trust account.

16. Defendant also failed to reconcile, at least monthly, his check register with his trust account bank statements and failed to instruct anyone else to conduct these monthly reconciliations.

17. The Firm Bookkeeper took entrusted funds to which she was not entitled from both the BB&T and North State trust accounts.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

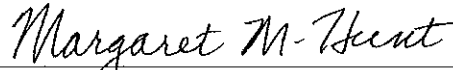
a. by failing to review the Firm Bookkeeper's handling of entrusted client funds, and failing to review his bank statements and other trust account records which he allowed the Firm Bookkeeper to maintain, Defendant failed to make reasonable efforts to ensure that the Calder and MHW Firms had in effect measures that gave reasonable assurance that his non-lawyer assistant's conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(a) and failed to supervise his non-lawyer assistant to the extent necessary to ensure that her conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(b); and

b. by failing to reconcile the BB&T and North State trust accounts at least quarterly, Defendant failed to conduct the requisite monthly and quarterly reconciliations of his trust accounts in violation of Rule 1.15-3(d).

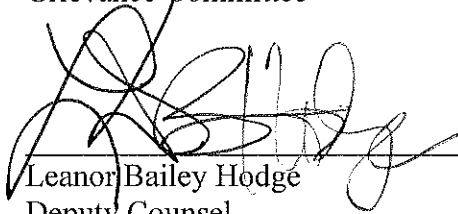
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 26<sup>th</sup> day of September, 2013.



Margaret M. Hunt, Chair  
Grievance Committee



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